

at this time contested. Applicants reserve the right to contest this finding in the future, as appropriate.

A pair of prior art rejections are next asserted over references to Richter and Wolf. Richter is said to teach that ALA “may be used to kill virus-containing cells, parasite-containing cells, bacteria, free viruses or other infectious agents.” Wolf is alleged to teach that ALA “may be used to treat fungi *in vivo*.” The claims are rejected alternatively as anticipated or obvious over each of Richter and Wolf, under 35 U.S.C. § 102, 103. For the reasons set out below, Applicants respectfully submit that these rejections should be removed.

First, the Richter reference relates only to disorders where the “target cells are in the bloodstream” (Abstract). The particular dosing regimen (col. 4, line 61 *et seq.*) and mode of light delivery (col. 5, lines 5-10 and lines 24-30) are adapted to this feature. Amended claims 1 and 19, however, cannot be construed to include treating diseases associated with blood-borne pathogens. Moreover, claims 36 and 44, their dependants, claims 18, 27, and claims 30-51 all relate to fungal disorders, which are neither taught nor suggested by Richter. Accordingly, because the teaching of Richter does not implicate non-blood-borne pathogens, it does not implicate any of the pending claims, and since the claims relate only to fungal disorders, yet Richter is deficient also in teaching this aspect, claims 36 and 44, 18, 27 and 30-51 are allowable for this additional reason.


Second, the Wolf reference does not teach treating fungi, rather it relates to *mycosis fungoides*, which has no relationship to fungi, despite its name. *Mycosis fungoides* are neoplasias of malignant T-lymphocytes that usually possess the helper/inducer cell surface phenotype. They are sometimes classified as cutaneous T-cell lymphomas. Applicants are aware of no pathological/etiological link between this malignancy and the fungi. Accordingly, it is submitted that, since the underlying premise of the rejection over Wolf is flawed, this rejection should be removed.

Finally, the PTO proffers an obviousness-type double patenting rejection over U.S. Patent No. 5,955,940. Applicants request that this rejection be held in abeyance until the claims are otherwise allowable. At that time, Applicants will take appropriate action to overcome this rejection.

The foregoing remarks and amendments compel the conclusion that the present claims are allowable over the cited prior art and that all rejections have been overcome. Applicants respectfully urge, therefore, that the claims as herein amended are in condition for allowance. Should the Examiner have any questions regarding the present application or believe that further discussion will advance prosecution, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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